

Congress of the United States

Washington, DC 20510

February 17, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C., 20201

Dear Secretary Burwell:

Nearly three years ago, the New Mexico Human Services Department (HSD) abruptly suspended Medicaid payments to 15 behavioral health providers claiming credible allegations of fraud. This decision upended New Mexico's behavioral health system overnight, disrupting care to some of our state's most vulnerable residents. As we have consistently conveyed via countless phone calls, letters, and in-person meetings, an overwhelming body of evidence indicates that this disruption was unwarranted and reckless. Enclosed, please find a letter from New Mexico Attorney General Hector Balderas reporting that his office has now cleared 10 of the providers that had been accused of fraud. Three others were cleared earlier, and now a total of 13 providers have been exonerated.

Attorney General Balderas's findings confirm our longstanding concern that the well-documented irregularities surrounding HSD's decision to suspend payments, which was not required by federal law, has undermined the legitimacy of its entire audit process. Furthermore, HSD denied providers' due process of law by indefinitely withholding payments while taking deliberate steps to preclude providers from challenging the charges against them. This callously disrupted care for New Mexico's most vulnerable.

It takes decades to build a strong system of care in our largely rural, underserved state, where sole providers become vital to the fabric of a community. For patients who receive mental health or substance abuse treatment, few things are as important as the ability to regularly see a trusted provider focused on providing quality care. Although the state has maintained that there has been little disruption, we have consistently heard otherwise. Even CMS has determined that state claims are inconclusive at best. Advocates, patients and their family members have told us alarming stories about losing access to quality care, as doctors and nurses have been laid off and clinics have closed across the state. Out-of-state contractors initially hired to provide transitional services were unprepared, unlicensed, unfamiliar with their new service areas, and slow to provide the full scope of services patients needed.

Our offices previously have asked the Centers for Medicare and Medicaid Services to provide federal oversight and assistance to ensure that this vulnerable population in New Mexico is able to access the care they need. However, no action has been taken. Medicaid is a federal-state partnership, and CMS should exercise any authority at its disposal to ensure that something like this will not happen again. We ask that the U.S. Department of Health and Human Services and the Centers for Medicare and Medicaid Services thoroughly review the Attorney General's report and provide us with a response detailing which oversight options are available and what actions the agency plans to take in response to this serious situation.

A good faith investigation into this issue is long overdue and we look forward to your future cooperation in ensuring that New Mexicans can access vital behavioral health services.

Accordingly, we request that you work with the State of New Mexico to ensure it implements the following policies and procedures to ensure its compliance with Federal requirements for determining whether there is a credible allegation of fraud:

1. Establish a verification process to ensure that the state conducts an appropriate preliminary investigation into an allegation of fraud that sufficiently meets a reasonable evidentiary standard.
2. Establish criteria for determining when the duration of a payment is no longer temporary.
3. Establish an administrative review process that affords providers due process of law.

New Mexicans who rely on Medicaid for health coverage – including behavioral health services – deserve a health care system that delivers high quality care when they need it most. We ask that you use your oversight authority to provide such care for New Mexicans.

Sincerely,



Tom Udall
United States Senator



Martin Heinrich
United States Senator



Ben Ray Luján
United States Representative



Michelle Lujan Grisham
United States Representative